

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A COMPLAINT  
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
(Prisoner Complaint Form)

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION**18 CV 774W**

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Darnell Green DIN: 07-B-0547

2. \_\_\_\_\_

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. Sergeant, Lewalski4. OFFICER, RIVERA2. OFFICER, HORBETT5. OFFICER, MANCINI3. OFFICER, RIVERA6. OFFICER, PECORA2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Darnell Green DIN 07-B-0547Present Place of Confinement & Address: ELMIRA Correctional FacilityP.O. BOX 500 ELMIRA NEW YORK 14902-0500

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement &amp; Address: \_\_\_\_\_

**DEFENDANT'S INFORMATION** NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: \_\_\_\_\_

(If applicable) Official Position of Defendant: \_\_\_\_\_

(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or \_\_\_\_\_ Official Capacity

Address of Defendant: \_\_\_\_\_

Name of Defendant: \_\_\_\_\_

(If applicable) Official Position of Defendant: \_\_\_\_\_

(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or \_\_\_\_\_ Official Capacity

Address of Defendant: \_\_\_\_\_

Name of Defendant: \_\_\_\_\_

(If applicable) Official Position of Defendant: \_\_\_\_\_

(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or \_\_\_\_\_ Official Capacity

Address of Defendant: \_\_\_\_\_

#### 4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?  
Yes ☒ No ☐

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): Darnell Green

Defendant(s): Wendy E. Morcio Assistant Attorney

Main place Tower, 350 Main St., Suite 300A, Buffalo 14202

2. Court (if federal court, name the district; if state court, name the county): COURT OF CLAIMS STATE OF  
NY. EMPIRE STATE PLAZA, Box 7344 CAPITAL Station Albany NY 12244

3. Docket or Index Number: Motion-No. M-92080 - Motion-No. M-92203

4. Name of Judge to whom case was assigned: Hon. Stephen J. Lynch.

5. The approximate date the action was filed: February 27, 2018

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☒

If not, give the approximate date it was resolved. May 31, 2018

Disposition (check the statements which apply):

☒ Dismissed (check the box which indicates why it was dismissed):

☒ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☒ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☒ Judgment upon motion or after trial entered for

☒ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_

Defendant(s): \_\_\_\_\_

2. District Court: \_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_

5. The approximate date the action was filed: \_\_\_\_\_

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved. \_\_\_\_\_

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

### 5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

**Please note that** it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

### Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) on February 9, 2017, at approximately 8:40<sup>am</sup>  
 defendant (give the name and position held of each defendant involved in this incident) OFFICER, Sergeant  
Lewalski, → OFFICER, Horbett, → OFFICER, Rivera, →  
OFFICER, Mancini, → OFFICER, Pecora

did the following to me (briefly state what each defendant named above did): Sergeant, [Lewalski]  
punched me in the face and lip; OFFICER, [Mancini]  
struck me with the stick on the top of my head  
OFFICER, Rivera] and the other officers was kicked  
me, bruised and broken my ribs; also security  
hadn't present sufficient evidence of  
malfeasance to the investigation office..  
Excessive Force.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: for my eighth Amendment  
under the Federal Constitution, was violated

The relief I am seeking for this claim is (briefly state the relief sought): Compensatory damages  
sum of money, for the injuries that I suffered  
further, nominal damages.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? The first  
Grievance was denied.

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? The Grievance  
was unanimously accepted.

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

A. SECOND CLAIM: On (date of the incident) on February 27, 2017, and June 21, 2017  
 defendant (give the name and position held of each defendant involved in this incident) DR, Jaguiline  
Levitt, → DR. Gusman, → DR. Wolf; Medical Doctors



did the following to me (briefly state what each defendant named above did): DR. Levitt, at Wende Correctional Facility, and DR. Wolff and DR. Gusman at Sullivan Correctional Facility. Plaintiff was informed by these Doctors that I had no broken ribs. That was incorrectly, of miss diagnosed after numerous of examination and overlooked exam reports. causing negligent malpractice

The constitutional basis for this claim under 42 U.S.C. § 1983 is: For my eighth Amendment under the Federal Constitution was violated

The relief I am seeking for this claim is (briefly state the relief sought): compensatory damages sum of money, for the injuries that I suffered further, nominal damages.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes ☐ No If yes, what was the result? The Grievance was accepted,

Did you appeal that decision? ☒ Yes ☐ No If yes, what was the result? I'm still waiting for that decision.

*Attach copies of any documents that indicate that you have exhausted this claim.*

If you did not exhaust your administrative remedies, state why you did not do so: \_\_\_\_\_

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

*Summarize the relief requested by you in each statement of claim above.*

compensatory damages, sum of money for the injuries that I suffered. Further nominal damages, for the extreme and outrageous misconduct of all defendants, further

Do you want a jury trial? Yes ☒ No ☐

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2] The nature of the claim <sup>Summarize For relief</sup>  
ASSAULT  
The claim is for physical and emotional personal injuries, past pain and suffering, future pain and suffering, past and future medical expenses, loss of services economic damages and other damages sustained as a result of the negligence of New York State Department of Corrections their agents, servants and/or employees. Claimant further alleges violation of claimant's civil rights as well as violation of 42 USC 1983 and 1988 \*

3] The time when, the place where and the manner in which the claim arose <sup>wende correctional facility</sup>  
<sup>Time 8:40 am,</sup>  
Failing to properly treat claimant's injuries in failing to follow its own police rules, guidelines and regulations; in causing physical harm to claimant; in violating the claimant's civil rights; of eighth Amendment.

4] Medical misconduct, consist of intentionally denying or delaying access to medical care or intentionally interfering with prescribed treatment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 10, 2018  
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*

\_\_\_\_\_  
\_\_\_\_\_  
Garnell Green

Signature(s) of Plaintiff(s)